

In the Matter of Merchant Mariner's Document No. Z-67692 and all other Seaman Documents
Issued to: HUGH CURTIS McMURRAY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1233

HUGH CURTIS McMURRAY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 29 April 1960, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while in the service of the United States SS SANTA MARGARITA and acting under authority of the document above described, on or about 9 December 1959, Appellant assaulted and battered a member of the crew, Harry Chan, while the ship was in the Port of New York.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of Harry Chan, the testimony of a Grace Line employee, and a certified extract from the Shipping Articles of the SANTA MARGARITA for the voyage completed on 8 December 1959.

The Examiner denied counsel's motion to dismiss on the ground that a prima facie case with regard to jurisdiction had not been made out because there was no evidence that Appellant had not been discharged by signing the Shipping Articles before the alleged offense occurred.

Appellant testified, in part, that he had signed the Shipping Articles before striking Chan; Appellant acted in self-defense because, due to an incident on 6 November on the ship, he had reason to believe that Chan was reaching into his pocket for a weapon.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of two months outright plus four months on twelve months' suspension.

FINDINGS OF FACT

On a foreign voyage commencing on 28 October 1959, Appellant served as an able seaman on board the United States SS SANTA MARGARITA (a Grace Line ship) while acting under authority of his document.

The crew signed off the Shipping Articles for the voyage in the Grace Line's building at Pier 57, North River, New York City, on the afternoon of 9 December 1959. About 1430, Appellant signed the Shipping Articles which shows this date, opposite Appellant's signature line, under the column "Date Wages Paid and Release Signed." Under the column for the date of leaving the ship, there is the date of 8 December. The articles also indicate that wages due Appellant were for a period of one month and eleven days. Hence, he was to be paid only through 8 December for the voyage under the Shipping Articles but he was also to be paid wages for 9 December under a supplemental pay roll. Appellant did not go to the window to collect his pay at this time.

Appellant sat at a table where a union patrolman was collecting dues. Harry Chan, a ship's baker, paid his dues and said something to Appellant who was about six feet from Chan. Appellant stood up, moved toward Chan and struck him in the right eye. Chan, outweighed by approximately seventy pounds, had not advanced toward Appellant after talking to him. Chan's injury consisted of a half-inch cut on his eyelid. Appellant left the building and returned about an hour later for his wages.

Appellant's prior record consists of two admonitions.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the decision is against the weight of the credible evidence; there was no jurisdiction to proceed because Appellant had terminated his service by signing the Shipping Articles and the act of striking Chan was a private affair which had no connection with the ship.

APPEARANCE: Cooper, Ostrin and DeVarco of New York by Thomas J. Doyle, Esquire, of Counsel.

OPINION

The jurisdiction of the Coast Guard depends upon whether Appellant was "acting under authority of his document" at the time of this incident on 9 December 1959. In factually similar situation except that the Shipping Articles were signed on the ship, the Commandant, in Appeal No. 864, stated:

"There is no doubt that jurisdiction for this action existed since Appellant was still acting

under the authority of his license since he was paid for working on 11 August. In addition, there was a direct causal connection between Appellant's employment status under his license and his presence on the ship."

There is the difference in the case under consideration that the sign-off took place on the shipowner's property on the pier rather than on the ship. But this fortuitous circumstance as to the location of the pay-off is not material since Appellant was paid wages for 9 December. The Examiner found that Appellant was "in the service of the SS SANTA MARGARITA, a merchant vessel of the United States, under authority of his Merchant Mariner's Document" partially on the basis of the company employee's testimony that "the termination date of the wages was December 9th, 1959" (R.33). This is the correct reason for concluding that there is jurisdiction because it has consistently been stated that whether there is jurisdiction to proceed depends upon the employment status of the seaman. Appeal No. 389 reads in part:

"*** Although it is usually true that the person charged is proven to have been acting under the authority of his license [or other document] as a corollary of being under articles for a voyage, it is not necessarily true that a person must be under articles in order to be acting under the authority of his license. It is the position of the Coast Guard that the paramount factor in determining whether a person is serving under authority of a license is the employment status."

It is my opinion that since Appellant was paid wages for 9 December, his service did not terminate when he signed off the Shipping Articles. He was still "in the service of the ship" and "acting under authority of his document" the same as would have been true if no Shipping Articles had been involved at any time. Consequently, Appellant was subject to Coast Guard jurisdiction at the time he struck Chan.

Concerning the merits of the case, the evidence shows that Appellant was guilty of assault and battery. In his testimony, Appellant admitted the truth of the above findings of fact on this point. Appellant added that since he had been threatened by Chan with an ice pick on 6 November, he thought that Chan was reaching for a weapon with which to injure Appellant; therefore, he struck Chan in self-defense to prevent injury to himself. I agree with the Examiner that such conduct was not justified regardless of whether Appellant's account of what occurred on 6 November is true. (Of course, it is denied by Chan.) Appellant was a reasonably safe distance away from Chan and there is no evidence that he actually had a weapon in his possession.

It is not material whether this was a "private affair" as contended on appeal.

ORDER

The order of the Examiner dated at New York, New York, on 29 April 1960, is AFFIRMED.

J. A. Hirshfield
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 26th day of April 1961.